AO 120 (Rev. 3/04)

TO:	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court WD/TX, Austin Division on the following x Patents or ☐ Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
1:11cv73-LY	January 24, 2011	Western District of Texas, Austin Division

PLAINTIFF	DEFENDANT
Maxus Strategic Systems, Inc.	Aqumin LLC Nirvana Systems, Inc.

	PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1	5,675,746		
2	5,774,878		
3	6,073,115		
4			
5			

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY ☐ Amendment ☒ Answer ☐ Cross Bill ☐ Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 Attached Counterclaim		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK	(BY) DEPUTY CLERK	DATE
William G. Putnicki	Katherine Wallace	July 5, 2011

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

10. An actual controversy exists with respect to whether there exists any valid claim of the '746, '878 and '115 patents.

11. Although Maxus alleges in the Complaint that Aqumin has infringed the claims of the '746, '878 and '115 patents, the claims of the '746, '878 and '115 patents are invalid because they fail to satisfy one or more conditions for patentability set forth in 35 U.S.C. §§ 101, *et seq.*, including, but not limited to, Sections 102, 103, 112 and 116.

12. A judicial determination with respect to the invalidity of the claims of the '746, '878 and '115 patents is now necessary and appropriate under 28 U.S.C. § 2201.

Count III
(Declaratory Judgment of Unenforceability)

13. Aqumin incorporates by reference the allegations contained in paragraphs 1 through 4 of the Counterclaims.

14. An actual controversy exists with respect to the enforceability of the '746, '878 and '115 patents.

15. Although Maxus alleges in the Complaint that Aqumin has infringed the claims of the '746, '878 and '115 patents, the '746, '878 and '115 patents are unenforceable under the doctrines of unclean hands, laches, estoppel, waiver, acquiescence, implied license, patent exhaustion, and/or other applicable equitable doctrines.

16. A judicial determination with respect to the enforceability of the '746, '878 and '115 patents is now necessary and appropriate under 28 U.S.C. § 2201.

Jury Demand

17. Aqumin respectfully requests a jury trial on all issues and claims so triable.

Prayer for Relief

WHEREFORE, Aqumin prays that this Court enter judgment:

a. declaring that Aqumin has not infringed any claim of the '746, '878 and '115 patents;

b. declaring that the claims of the '746, '878 and '115 patents are invalid;

c. declaring that the '746, '878 and '115 patents are unenforceable;

d. finding that this case is exceptionable pursuant to 35 U.S.C. § 285 and awarding Aqumin its reasonable attorneys' fees, expenses and costs incurred in this action; and

e. awarding Aqumin all such other and further relief this Court deems just and proper.

July 5, 2011

Respectfully submitted,

/s/ Alistair B. Dawson

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ATTORNEYS FOR DEFENDANT AQUMIN LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV—5(b)(1). Pursuant to Local Rule CV-5(b)(2), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy via facsimile this 5th day of July 2011.

/s/ Michael E. Richardson
Michael E. Richardson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MAXUS STRATEGIC SYSTEMS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 1:11-CV-73
	§	
AQUMIN LLC AND NIRVANA	§	JURY TRIAL REQUESTED
SYSTEMS, INC.,	§	
	§	
Defendants.	§	

DEFENDANT AQUMIN LLC'S ANSWER, DEFENSES AND COUNTERCLAIMS TO PLAINTIFF'S ORIGINAL COMPLAINT

Defendant Aqumin LLC ("Aqumin") hereby files its answer, defenses and counterclaims to the Plaintiff's Original Complaint ("Complaint") filed by Maxus Strategic Systems, Inc. ("Maxus") on January 24, 2011.

ANSWER TO COMPLAINT

Each of the paragraphs below corresponds to the same-numbered paragraphs in the Complaint. Aqumin denies all the allegations in the Complaint, whether express or implied, that are not specifically admitted below. Aqumin responds to the allegations in the Complaint as follows:

PARTIES[1]

1. Aqumin lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1, and therefore denies same.

[1] Aqumin repeats the headings set forth in the Complaint in order to simplify comparison of the Complaint and this Answer. By doing so, Aqumin makes no admissions regarding the substance of the heading or any other allegation in the Complaint and unless otherwise stated, to the extent that a particular heading can be construed as an allegation, Aqumin specifically denies all such allegations.

2. Aqumin denies that it is a corporation; rather, it is a limited liability company. Aqumin admits the remaining allegations in paragraph 2.

3. Aqumin lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 3, and therefore denies same.

JURISDICTION AND VENUE

4. Aqumin admits that the Complaint purports to state a claim for patent infringement under the Patent Laws of the United States, Title 35 of the United States Code, but denies that the claim has any merit as to Aqumin.

5. Aqumin denies that it transacts business in this judicial district. If Nirvana Systems, Inc. ("Nirvana") has its principal place of business in Austin as alleged in the Complaint and is properly named and served as a defendant herein, Aqumin admits that venue is proper in this judicial district. If Nirvana does not have its principal place of business in Austin and/or is not properly named and served as a defendant herein, Aqumin denies that venue is proper in this judicial district. Aqumin does not believe that Nirvana has been served with the Complaint and, thus, is not a party to this case. Aqumin otherwise denies the allegations in paragraph 5 as to Aqumin. To the extent this paragraph pertains to defendants other than Aqumin, Aqumin lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies same.

FACTUAL BACKGROUND

6. Aqumin admits that U.S. Patent No. 5,675,746, entitled "Virtual Reality Generator for Use with Financial Information" ("the '746 Patent"), was issued by the U.S. Patent and Trademark Office on October 7, 1997. Aqumin denies that the patent was "duly and legally"

issued or that the patent is valid and enforceable. Aqumin admits that Paul Marshall is the sole inventor listed on the patent but lacks knowledge or information sufficient to form a belief about the truth of such allegations, and therefore denies same. Aqumin admits that a copy of the '746 Patent purports to be attached to the Complaint as Exhibit A. Aqumin states that the patent speaks for itself. Except to the extent specifically admitted, Aqumin denies the remaining allegations in paragraph 6.

7. Aqumin admits that U.S. Patent No. 5,774,878, entitled "Virtual Reality Generator for Use with Financial Information" ("the '878 Patent"), was issued by the U.S. Patent and Trademark Office on June 30, 1998. Aqumin denies that the patent was "duly and legally" issued or that the patent is valid and enforceable. Aqumin admits that Paul Marshall is the sole inventor listed on the patent but lacks knowledge or information sufficient to form a belief about the truth of such allegations, and therefore denies same. Aqumin admits that a copy of the '878 Patent purports to be attached to the Complaint as Exhibit B. Aqumin states that the patent speaks for itself. Except to the extent specifically admitted, Aqumin denies the remaining allegations in paragraph 7.

8. Aqumin admits that U.S. Patent No. 6,073,115, entitled "Virtual Reality Generator for Displaying Abstract Information" ("the '115 Patent"), was issued by the U.S. Patent and Trademark Office on June 6, 2000. Aqumin denies that the patent was "duly and legally" issued or that the patent is valid and enforceable. Aqumin admits that Paul Marshall is the sole inventor listed on the patent but lacks knowledge or information sufficient to form a belief about the truth of such allegations, and therefore denies same. Aqumin admits that a copy of the '115 Patent purports to be attached to the Complaint as Exhibit C. Aqumin states that the

patent speaks for itself. Except to the extent specifically admitted, Aqumin denies the remaining allegations in paragraph 8.

9. Aqumin lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9, and therefore denies same.

10. Aqumin denies the allegations in paragraph 10.

11. Aqumin lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11, and therefore denies same.

CAUSE OF ACTION FOR PATENT INFRINGEMENT

12. Paragraph 12 incorporates previously answered factual allegations and therefore requires no further response. To the extent a response is required, Aqumin incorporates its responses to paragraphs 1-11 above.

13. Aqumin denies the allegations in paragraph 13 as to Aqumin. To the extent this paragraph pertains to defendants other than Aqumin, Aqumin lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies same.

14. Aqumin denies the allegations in paragraph 14 as to Aqumin. To the extent this paragraph pertains to defendants other than Aqumin, Aqumin lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies same.

15. Aqumin denies the allegations in paragraph 15 as to Aqumin. To the extent this paragraph pertains to defendants other than Aqumin, Aqumin lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies same.

16. Aqumin denies the allegations in paragraph 16 as to Aqumin. To the extent this paragraph pertains to defendants other than Aqumin, Aqumin lacks knowledge or information sufficient to form a belief about the truth of the allegations, and therefore denies same.

17. Aqumin acknowledges Maxus has demanded a trial by jury.

Aqumin denies that Maxus is entitled to any relief from or a judgment against Aqumin, either as prayed for in the Complaint or otherwise.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof when such burden would otherwise be on Maxus, Aqumin asserts the following affirmative defenses to the allegations in the Complaint:

First Affirmative Defense – Failure to State a Claim

18. The Complaint fails to state a claim upon which relief can be granted against Aqumin.

Second Affirmative Defense – Non-Infringement

19. Aqumin has not infringed under any theory (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)), any valid and enforceable claim of the '746, '878 and '115 patents.

20. To the extent that Maxus asserts that Aqumin indirectly infringes, either by contributory infringement or inducement of infringement, Aqumin is not liable to Maxus for the acts alleged to have been performed before Aqumin knew that its actions would cause indirect infringement.

Third Affirmative Defense – Invalidity

21. The claims of the '746, '878 and '115 patents are invalid for failing to meet one or more of the requisite requirements and/or conditions for patentability under Title 35 of the United States Code §§ 101 *et seq.*, including without limitation §§101, 102, 103, 112, 116, and/or judicial decisions.

Fourth Affirmative Defense – Equitable Bars

22. Maxus's claims against Aqumin are barred, in whole or in part, by the doctrines of laches, estoppel, waiver, acquiescence, implied license, patent exhaustion, and/or other applicable equitable doctrines.

Fifth Affirmative Defense – Doctrine of Equivalents

23. Maxus is barred from asserting any range of equivalents under the doctrine of equivalents and/or the doctrine of prosecution history estoppel by virtue of cancellations, amendments, representations, and concessions the patentee made to the U.S. Patent and Trademark Office during the prosecution of the patents-in-suit.

Sixth Affirmative Defense – Limitations on Recovery

24. Maxus's claim for damages is limited by 35 U.S.C. §§ 286, 287 and/or 288.

Seventh Affirmative Defense – Ownership

25. To the extent Maxus does not own all rights to the '746, '878 and '115 patents, the Complaint must be dismissed for lack of standing.

Eighth Affirmative Defense – Unclean Hands

26. Maxus's claims against Aqumin are barred under the doctrine of inequitable conduct.

Ninth Affirmative Defense – Reservation

27. Aqumin reserves all affirmative defenses available under Rule 8(c) of the Federal Rules of Civil Procedure, and any other defenses, at law or in equity, that may be available now or may become available in the future based on discovery or any other factual investigation in this case.

WHEREFORE, Aqumin respectfully requests that this Court enter judgment:

a. finding that Maxus take nothing by its Complaint, including a complete denial of Maxus requests for damages, injunctive relief, costs, expenses, attorneys' fees, and any other form of relief;

b. dismissing the Complaint with prejudice;

c. against Maxus and in favor of Aqumin on all counts;

d. declaring this case exceptional under 35 U.S.C. § 285 and awarding Aqumin its reasonable attorneys' fees, expenses and costs incurred in this action; and

e. awarding Aqumin such other and further relief as the Court deems just and proper.

COUNTERCLAIMS

For its Counterclaims against Maxus, Aqumin states as follows:

Parties

1. Counterclaim-Plaintiff Aqumin is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business in Houston, Texas.

2. Upon information and belief, Counterclaim-Defendant Maxus is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business in Mendon, Vermont.

Jurisdiction and Venue

3. These Counterclaims arise under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. The Court has subject matter jurisdiction over these Counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, and 2201-02.

4. This Court has personal jurisdiction over Maxus and Maxus has voluntarily appeared and consented to this venue by filing its claims for patent infringement here.

Count I
(Declaratory Judgment of Non-Infringement)

5. Aqumin incorporates by reference the allegations contained in paragraphs 1 through 4 of the Counterclaims.

6. An actual controversy exists with respect to the alleged infringement of the '746, '878 and '115 patents.

7. Although Maxus alleges in the Complaint that Aqumin has infringed the claims of the '746, '878 and '115 patents, Aqumin has not and does not infringe, under any theory (including directly (whether individually or jointly) or indirectly (whether contributorily or by inducement)), any valid and enforceable claim of the '746, '878 and '115 patents.

8. A judicial determination with respect to the non-infringement by Aqumin of the claims of the '746, '878 and '115 patents is now necessary and appropriate under 28 U.S.C. § 2201.

Count II
(Declaratory Judgment of Invalidity)

9. Aqumin incorporates by reference the allegations contained in paragraphs 1 through 4 of the Counterclaims.